

2005 SENATE BILL 530

1 **AN ACT** *to amend* 346.65 (2) (b), 346.65 (2) (c), 346.65 (2j) (b), 346.65 (2j) (c),
2 346.65 (3m) and 973.11 (1) (intro.); and *to create* 346.65 (2) (bm), 346.65 (2)
3 (cm), 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (3r) and 346.65 (8) of the statutes;
4 **relating to:** drunken driving and creating a penalty.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 346.65 (2) (b) of the statutes is amended to read:
6 346.65 **(2)** (b) Except as provided in par. pars. (bm) and (f), shall be fined not
7 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more
8 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the
9 person's lifetime, plus the total number of suspensions, revocations, and other
10 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except

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1 that suspensions, revocations₁ or convictions arising out of the same incident or
2 occurrence shall be counted as one.

3 **SECTION 2.** 346.65 (2) (bm) of the statutes is created to read:

4 346.65 **(2)** (bm) In Winnebago County, if the number of convictions under ss.
5 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
6 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
7 period, equals 2, except that suspensions, revocations, or convictions arising out of
8 the same incident or occurrence shall be counted as one, the fine shall be the same
9 as under par. (b), but the period of imprisonment shall be not less than 5 days, except
10 that if the person successfully completes a period of probation that includes alcohol
11 and other drug treatment, the period of imprisonment shall be not less than 5 nor
12 more than 7 days. A person may be sentenced under this paragraph or under par.
13 (cm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

14 **SECTION 3.** 346.65 (2) (c) of the statutes is amended to read:

15 346.65 **(2)** (c) Except as provided in pars. (cm), (f)₁ and (g), shall be fined not
16 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
17 more than one year in the county jail if the number of convictions under ss. 940.09
18 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
19 revocations₁ and other convictions counted under s. 343.307 (1), equals 3, except that
20 suspensions, revocations₁ or convictions arising out of the same incident or
21 occurrence shall be counted as one.

22 **SECTION 4.** 346.65 (2) (cm) of the statutes is created to read:

23 346.65 **(2)** (cm) In Winnebago County, if the number of convictions under ss.
24 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
25 revocations, and other convictions counted under s. 343.307 (1) within a 10-year

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1 period, equals 3, except that suspensions, revocations, or convictions arising out of
2 the same incident or occurrence shall be counted as one, the fine shall be the same
3 as under par. (c), but the period of imprisonment shall be not less than 30 days, except
4 that if the person successfully completes a period of probation that includes alcohol
5 and other drug treatment, the period of imprisonment shall be not less than 10 days.
6 A person may be sentenced under this paragraph or under par. (bm) or sub. (2j) (bm)
7 or (cm) or (3r) once in his or her lifetime.

8 **SECTION 5.** 346.65 (2j) (b) of the statutes is amended to read:

9 346.65 **(2j)** (b) Except as provided in par. pars. (bm) and (d), shall be fined not
10 less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more
11 than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in
12 the person's lifetime, plus the total number of other convictions, suspension, and
13 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

14 **SECTION 6.** 346.65 (2j) (bm) of the statutes is created to read:

15 346.65 **(2j)** (bm) In Winnebago County, if the number of convictions under ss.
16 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
17 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
18 period, equals 2, except that suspensions, revocations, or convictions arising out of
19 the same incident or occurrence shall be counted as one, the fine shall be the same
20 as under par. (b), but the period of imprisonment shall be not less than 5 days, except
21 that if the person successfully completes a period of probation that includes alcohol
22 and other drug treatment, the period of imprisonment shall be not less than 5 nor
23 more than 7 days. A person may be sentenced under this paragraph or under par.
24 (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

25 **SECTION 7.** 346.65 (2j) (c) of the statutes is amended to read:

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1 346.65 **(2j)** (c) Except as provided in ~~par. (cm)~~ pars. (cm) and (d), shall be fined not
2 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
3 more than one year in the county jail if the number of convictions under ss. 940.09
4 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,
5 suspensions, and revocations, counted under s. 343.307 (2), equals 3 or more.

6 **SECTION 8.** 346.65 (2j) (cm) of the statutes is created to read:

7 346.65 **(2j)** (cm) In Winnebago County, if the number of convictions under ss.
8 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
9 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
10 period, equals 3 or more, except that suspensions, revocations, or convictions arising
11 out of the same incident or occurrence shall be counted as one, the fine shall be the
12 same as under par. (c), but the period of imprisonment shall be not less than 30 days,
13 except that if the person successfully completes a period of probation that includes
14 alcohol and other drug treatment, the period of imprisonment shall be not less than
15 10 days. A person may be sentenced under this paragraph or under par. (bm) or sub.
16 (2) (bm) or (cm) or (3r) once in his or her lifetime.

17 **SECTION 9.** 346.65 (3m) of the statutes is amended to read:

18 346.65 **(3m)** ~~Any~~ Except as provided in sub. (3r), any person violating s. 346.63
19 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be
20 imprisoned for not less than 30 days nor more than one year in the county jail. If
21 there was a minor passenger under 16 years of age in the motor vehicle at the time
22 of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense
23 is a felony, the applicable minimum and maximum fines or periods of imprisonment
24 for the conviction are doubled and the place of imprisonment shall be determined
25 under s. 973.02.

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1 **SECTION 10.** 346.65 (3r) of the statutes is created to read:

2 346.65 **(3r)** In Winnebago County, any person violating s. 346.63 (2) or (6) shall
3 be fined the same as under sub. (3m), but the period of imprisonment shall be not less
4 than 30 days, except that if the person successfully completes a period of probation
5 that includes alcohol and other drug treatment, the period of imprisonment shall be
6 not less than 15 days. If there was a minor passenger under 16 years of age in the
7 motor vehicle at the time of the violation that gave rise to the conviction under s.
8 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines
9 or periods of imprisonment for the conviction are doubled and the place of
10 imprisonment shall be determined under s. 973.02. A person may be sentenced
11 under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his
12 or her lifetime.

13 **SECTION 10m.** 346.65 (8) of the statutes is created to read:

14 346.65 **(8)** There shall be a pilot project in Winnebago County providing for
15 alternative penalties under this section, which penalties shall be as specified in subs.
16 (2) (bm) and (cm), (2j) (bm) and (cm), and (3r).

17 **SECTION 11m.** 973.11 (1) (intro.) of the statutes, as affected by 2003 Wisconsin
18 Act 33, is amended to read:

19 973.11 **(1)** PLACEMENTS. (intro.) If a person is convicted of or pleads guilty or
20 no contest to one or more misdemeanors for which either mandatory periods of
21 imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm)
22 or (cm), (2j) (bm) or (cm), or (3r), if the chief judge of the judicial administrative
23 district has approved a volunteers in probation program established in the
24 applicable county, and if the court decides that volunteer supervision under the
25 program will likely benefit the person and the community and subject to the

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1 limitations under sub. (3), the court may withhold sentence or judgment of conviction
2 and order that the person be placed with that volunteers in probation program. A
3 person's participation in the program may not be used to conceal, withhold, or mask
4 information regarding the judgment of conviction if the conviction is required to be
5 included in a record kept under s. 343.23 (2) (a). Except as provided in sub. (3), the
6 order shall provide any conditions that the court determines are reasonable and
7 appropriate and may include, but need not be limited to, one or more of the following:

8 **SECTION 12. Initial applicability.**

9 (1) This act first applies to violations that are committed on the effective date
10 of this subsection.

11 (END)